

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Currently, all persons detained for criminal offenses have a right to a first appearance before a judge within 24 hours of their arrest. Fla.R. Crim. Pro. 3.130(a). At the first appearance, the judge informs the defendant of the charges against him and provides him with a copy of the complaint. Fla. R. Crim. Pro. 3.130(b). The court also inquires as to whether the defendant has obtained counsel or qualifies for appointment of representation. Fla. R. Crim Pro. 3.130(c) The first appearance court also conducts a hearing to determine pretrial release. Fla. R. Crim Pro 3.130(d) and 3.131(b).

Every person has the right to pretrial release, unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great. Fla R. Crim. Pro. 3.131(a) However, the court is to ensure that the conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, and assure the integrity of the judicial process. Fla. R. Crim. Pro. 3.131(a). The judge at first appearance is authorized to determine the amount of any monetary bail that may be required and to execute an unsecured appearance bond in the amount specified by the judge. Fla R. Crim. Pro. 3.131(b). Section 907.041(3)(a), F.S. provides that release on nonmonetary conditions is possible for those granted pretrial release unless they have been arrested for one of the enumerated dangerous crimes.

Currently in Florida bail is set by the court and defendant can either obtain a bail bond through a licensed bail bond agent or post cash bail, be released from custody on his or her own recognizance, or be allowed by the court to enter a pretrial intervention or diversion program. Section 907.041(4)(b), F.S. provides the court with discretion to release an accused on “electronic monitoring” or on recognizance bond if the findings on the record of facts warrant such a release. In the juvenile law setting, electronic monitoring is one of the forms of pretrial detention which can be ordered if allowed by the risk assessment instrument. See s. 985.215, F.S.¹ Electronic monitoring is already utilized in the adult context as a condition of probation as provided in s. 948.03, F.S. and is administered by the Department of Corrections.

¹ The Risk Assessment Instrument provided in s. 985.215, F.S. is utilized at a detention hearing to determine the appropriate level of detention of a juvenile pending resolution of a pending charge. The instrument functions as a score sheet which factors in the seriousness of the current offense and a juvenile’s past criminal history by assigning each a certain number of points. Juveniles scoring 0-9 points must be released to home detention, which entails supervision by the youth’s parents with some restrictions ordered by the court. Juvenile’s scoring 9-11 points may be released on home detention with an electronic monitor. Juveniles scoring 12 points or high must be held in secure detention for 21 days (or in serious cases 30 days) until they plea or have an adjudicatory hearing, at which time the question of detention status is revisited by the court, again utilizing the Risk Assessment Instrument.

HB 943 would enable a bail bond agent to provide electronic monitoring of any person who is on pretrial release by the court in accordance with chapter 903, subject to the conditions requiring electronic monitoring. The bill permits bondsmen to contract with government entities to provide electronic monitoring services. Bail bond agencies are authorized to collect a reasonable fee, and failure to pay such fee constitutes grounds for the agent to remand such person to the sheriff. The bill provides that the assessment of this fee shall be exempt from the provisions which allow the Department of Financial Services to make rules and monitor bail bond collection.

The bill provides specific authorization for a court to order electronic monitoring, if such services are provided in its jurisdiction. The bill also provides that the failure of the defendant to make timely payment of such fees constitutes a violation of pretrial release, and that such a violation must be reported promptly.

Finally the bill creates a new third degree felony offense of altering, tampering with, damaging, or destroying electronic monitoring equipment. The bill only applies to offenses committed on or after the effective date of the bill, October 1, 2004.

C. SECTION DIRECTORY:

Section 1. amends s. 648.387, F.S..

Section 2. amends s. 903.0472, F.S.

Section 3. provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Those local governments or courts currently providing electronic monitoring services in their jurisdictions would have the option of permitting bail bond services to provide these services. Since the cost of the service would be borne by the defendant, this may result in a reduction in costs for those governments currently providing this form of pretrial release.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Bondsmen would be able to charge a fee from the defendant for electronic monitoring services and would be able to contract with local governments for these services. In addition, companies which provide the equipment and monitoring services would be able to profit from increased demand for their products and services.

D. FISCAL COMMENTS:

Although current law allows for pretrial release on electronic monitoring, there is no apparent single way that electronic monitoring is provided, if at all, within a given jurisdiction. The current costs are borne by local governments or courts, and occasionally the Department of Corrections may enter into informal agreements with a locality to provide the service as a part of its normal probationary electronic monitoring programs. The bill would enable bail bondsmen to contract with local governments for this service, and to extract a "reasonable fee" from defendants released on electronic monitoring. Because, the bill does not define the term "reasonable," there may be a need in the future for a court to interpret this term. According to the Florida Surety Agents Association, the current daily fee for electronic monitoring is between \$10 and \$16 a day.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require local governments to provide electronic monitoring and is not therefore a local mandate.

2. Other:

One issue which could arise in the bill is whether the nonpayment of fees which would result in a violation of pretrial release would constitute an impermissible "imprisonment for debt." Article I, Section 11, of the Florida Constitution forbids the government from imprisoning persons for nonpayment of financial obligations, unless the debtor has engaged in fraud. This provision, however, does not generally apply to criminal fines, and insofar as the fees associated with electronic monitoring may be considered a court fine or fee, it should withstand constitutional scrutiny. See Turner v. State, 168 So.2d 192 (Fla. 3d DCA 1964). In a similar vein, if the fees are viewed as an obligation for pretrial release similar to payment of a cash bond, there should not be a constitutional issue.

However, the Florida Supreme Court has also held that where a probationer whose probation was conditioned upon making restitution could not be imprisoned for failing to pay unless it was demonstrated that he had the ability to pay. Stephens v. State, 630 So.2d 1090 (Fla. 1990) Because the bail bond service would be administering electronic monitoring pursuant to a court order, insofar as the bail bond service can be viewed within this context as an instrument of the state and the fees association with the maintenance of the electronic monitoring can be viewed as a debt, the constitutional provision may apply.

B. RULE-MAKING AUTHORITY:

The bill specifically exempts the fees collected for electronic monitoring from the provisions of s. 648.26. Section 648.26, F.S. provides, in part, for the Department of Financial Services to make rules related to the regulation for funds maintained by bond agents. Fees collected by bond agents pursuant to the bill would be exempt. The Department of Financial Services has been contacted and has no objection to this provision.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

